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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,607	11/12/2003	Walter J. Petersen	26.2.C47/USA	5867

7590

10/04/2005

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EXAMINER

NOVOSAD, CHRISTOPHER J

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

NC

Office Action Summary

Application No.

10/706,607

Applicant(s)

PETERSEN ET AL.

Examiner

Christopher J. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 22-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 22-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 060904 and 102804.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 6-21 have been canceled.

Election/Restrictions

Applicant's election without traverse of Group I, claims 1-5 and 22-27 in the reply filed on July 13, 2005 is acknowledged. No claims have been withdrawn since claims 6-21 have been canceled.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 22, line 6, the recitation "may be" renders the claim indefinite since it is unclear whether the steering control is gripped and pivoted or not.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 22-24, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Rizzo.

As indicated on the Search Report dated October 28, 2004, note Figs. 1-3 of Rizzo. Note also the disclosure in col. 2, line 19 - column 3, line 31 and in claims 1 and 2 of Rizzo.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rizzo in view of World reference '341.

Rizzo shows the aerator as noted, including a pair of laterally spaced wheels 16 and a steerable front wheel 14.

The claims distinguish over Rizzo in requiring (1) the pair of laterally spaced wheels to be longitudinally offset from a third wheel, the pair of laterally spaced wheels and the third wheel to be arranged in a tricycle configuration on the frame (as required in claim 4); (2) the third wheel to be pivotally carried on the frame, and the handle assembly to be operatively coupled to the third wheel for steering the frame (as required in claim 5); (3) a front wheel to be on the front end of the frame (as required in claim 25).

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World reference '341 shows in Fig. 4 (1) a pair of laterally spaced wheels 21 (page 4, line 10) being longitudinally offset from a third wheel 23, the pair of laterally spaced wheels 21 (page 4, line 10) and the third wheel 23 being arranged in a tricycle configuration (Fig. 4) on the frame 17 (as required in claim 4); (2) the third wheel 23 being pivotally carried on the frame 17, and the handle assembly 25,26 being operatively coupled to the third wheel 23 for steering the frame 17 (as required in claim 5); (3) a front wheel 23 being on the front end (unnumbered) of the frame 17 (as required in claim 25).


It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a front wheel as shown in World reference '341 in the manner noted for greater control and flexibility.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 571-272-6993. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad
Primary Examiner
Art Unit 3671

September 30, 2005